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Rupert B. Hurley Jr.

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January 17, 2006

DATE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors:	MUDAR et al	Group Art Unit:	1772
Serial No.:	09/426,827	Examiner:	Hon, Sow Fun
Filing Date:	October 25, 1999	Attorney Docket No.:	D-43266-01

Title: PATCH BAG WITH PATCH CONTAINING HIGH AND LOW CRYSTALLINITY ETHYLENE COPOLYMERS

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REVISED REPLY BRIEF UNDER 37 CFR § 41.41

Sir:

This Revised Reply Brief is filed in response to the revised Examiner's Answer mailed 16 November 2005, the two-month period for reply to which extends through Tuesday, 17 January 2006, as Monday 16 January 2006 is a federal holiday (Martin Luther King Jr. Day). This Reply Brief is being filed on 17 January 2006. Reconsideration of the patentability of the claims on appeal is respectfully requested, in view of the following remarks.

Remarks

Appellants contend that the rejections of the claims do not make out a prima facie case of obviousness. In addition, Appellants contend that if it is deemed that a prima facie case of obviousness has been made out for any one or more of the claims on appeal, Appellants specification contains evidence of unexpected results.

Appellants' Claim 1 is directed to a patch bag, i.e., a heat-shrinkable patch adhered to a heat-shrinkable bag. Claim 1 recites the patch as comprising a heat-shrinkable film comprising a blend of LLDPE and VLDPE. Claim 1 further recites the patch as adhered to the bag with an adhesive or corona treatment.

Claims 1, 3-8, 11-17, and 26 stand rejected as obvious over FERGUSON et al '856 in view of WALTON. FERGUSON et al '856, the primary reference, discloses a blend of LLDPE and VLDPE for use in a heat shrinkable film used to make a heat shrinkable bag. FERGUSON et al '856 has no teaching or suggestion of a heat shrinkable patch bag or a heat shrinkable patch for a bag. The revised Examiner's Answer admits this in stating: "Ferguson ('856) fails to teach a heat-shrinkable patch adhered to a heat-shrinkable bag." [See the revised Examiner's Answer at Page 5 line 12-13.] Furthermore, Page 6 lines 9-13 of the revised Examiner's Answer states that FERGUSON et al '856 teaches layers adhered together with an adhesive, citing Column 9 lines 20-30 of FERGUSON et al '856, and concludes that it would have been obvious to have adhered the patch to the bag with an adhesive as taught by FERGUSON et al '856 in order to prevent delamination.

1. No Teaching or Suggestion of an Adhesive To Adhere Patch Film To Bag Film

A first reason that the Office Actions and the revised Examiner's Answer fails to make out a prima facie case of obviousness of Claims 1, 3-8, 11-17, and 26 is that neither FERGUSON et al '856 nor WALTON teaches or suggests adhering a patch to a bag with an adhesive. The adhesive layers present at Column 9 lines 20-30 of FERGUSON et al '856 are layers *internal to the film that would serve as the patch*, i.e., layers coextruded with the multilayer film of FERGUSON et al '856:

> In this structure it is preferred that the inside VLDPE and EVA layers be irradiated before the PVDC and outer VLDPE layers are coated thereon.
>
> Example 6: VLDPE/Adhesive/PVDC/Adhesive/VLDPE
> (Inside) (Outside)
> This structure is preferred for maximum delamination protection. The adhesive can be an EVA of 10% or greater vinyl acetate content, a Plexar brand adhesive from Chemplex Company of Rolling Meadows, Ill., or a CXA brand adhesive from duPont Corporation of Wilmington, Del. [FERGUSON et al '856 Col 9 lines 20-30]

If the film of FERGUSON et al '856 is to serve as the patch film, as suggested in the various rejections and the revised Examiner's Answer[1], the patch would still have to be affixed to the bag in some manner. The internal adhesive layers in Example 6 in the above excerpt are internal adhesive layers coextruded with the other layers of the multilayer film which the Examiner suggests be used as a patch. These internal adhesive layers clearly cannot serve to adhere the patch film to the bag. In fact, the internal adhesive layers cannot possibly be used to adhere the patch to the bag. Thus, something more is required to adhere this multilayer

[1] The Examiner's Answer admits that FERGUSON et al '856 does NOT disclose a patch on a bag. Thus, the VLDPE/adhesive/PVDC/adhesive/VLDPE multilayer film in Example 6 of FERGUSON et al '856 is clearly not being asserted to constitute both the patch and the bag. The internal adhesive layers of the patch film cannot possibly serve to adhere the patch film to the bag film.

structure to the bag. Contrary to the various Office Actions, this "something more" is simply not taught or suggested by FERGUSON et al '856. As such, no prima facie case of obviousness of any one or more of Claims 1, 3-8, 11-17, and 26 has been made out by the Examiner.

2. WALTON Teaches Away from Patches on Bags

In order modify the bag of FERGUSON '856 to a patch bag, the Office Actions and the Examiner's Answer turn to WALTON et al as the secondary reference, relying on the only portion of WALTON et al which refers to a patch for a bag:

> Successful packaging or wrapping for all four methods, depends on the toughness and abuse or implosion resistance properties of the film materials themselves such that the packaged product's integrity is maintained during distribution, handling and/or display. However, toughness and abuse resistance are particularly important in food shrink wrapping and vacuum packaging which often times involves packaging of meat and other food cuts with deep cavities and sharp exposed bones as well as exposed edges that can puncture the film webs or fabricated bag during the heat-shrink or vacuuming-form operation or during subsequent package handling and distribution. To avoid premature puncturing, film producers resort to expensive practices to toughen the package such as using thicker films and bags, using an extra layer of film at critical contact points of the bag in a patch-like fashion as described by Ferguson in U.S. Pat. No. 4,755,403, or by using cross-ply or non-parallel layer constructions. Similarly, to "artificially" enhance the puncture and other abuse or implosion resistance characteristics of known film materials, food packagers routinely wrap or cap exposed bone edges with cloth, molded plastic articles or other materials. [WALTON et al, Col. 2 line 62 through Col. 3 line 16, emphasis added]

However, WALTON et al goes on to teach:

> ...even tougher film materials are desired in shrink, skin and vacuum packaging for reduced bag punctures.... [WALTON et al, Col. 4 lines 38-45]

Thereafter, WALTON et al also teaches:

> ...the need still exists for improved olefin packaging films and bags...with particular improvement needed in...abuse...resistance...relative to the VLDPE olefin polymers.... [WALTON et al, Col. 6 lines 35-43]
>
> In accordance with the present invention, we have discovered a new and improved...film....[WALTON et al, Col. 6 lines 46-48]
>
> These improvements are achieved by using a film structure comprising at least one film layer containing at least one substantially linear ethylene polymer....[WALTON et al, Col. 7 lines 6-8]

The clear message from these combined passages is that WALTON et al is *teaching away* from the use of a patch on a bag. WALTON et al states that patches on bags are an "expensive practice" which film producers have "resorted to" in order to toughen the package in combination with the use of "thicker films and bags". WALTON et al characterizes patches on bags as one of several "artificial" ways of enhancing puncture, abuse, and implosion resistance of film. The clear message from this passage and the subsequent passages is that one of skill in the art should make the bag from a tougher film containing the substantially linear ethylene polymer described in WALTON et al, without having to place a patch on the bag. Thus, WALTON et al teaches away from the patch bag of Appellants' invention.

Thus, neither FERGUSON '856 nor WALTON et al provides motivation to use a patch bag. Even the Examiner's Answer admits that patch bags are not taught or suggested by FERGUSON '856, and the above quotations from WALTON et al make it readily apparent that WALTON et al is teaching away from patch bags. No prima facie case of obviousness has been made out.

The Examiner's Answer states, in effect, that the PTO is entitled to rely upon *only a portion* of WALTON et al, while *intentionally and necessarily ignoring* the remainder

of WALTON et al. The Examiner's Answer would have us take from WALTON et al only the historical statement that patches on bags are in the prior art, ignoring the remainder of WALTON et al. The Examiner's Answer refers to MPEP §2123 and MPEP §2144.07 in support of ignoring the remainder of WALTON et al '958. However, Appellants rely upon the heading in MPEP §2141.02 VI: "PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM CLAIMS". Clearly, the rule is that "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." See MPEP §2141.02 VI. When considered in its entirety, WALTON et al teaches away from Appellants' claims, for the reasons pointed out above. Moreover, Appellants direct attention to MPEP §2144.01 Implicit Disclosure, which states

> "[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." [MPEP §2144.01, citing In re Preda, 159 USPQ 342, 344 (CCPE 1968)]

While the two cases cited and discussed in §2144.01 utilize implicit disclosure as a basis for sustaining rejections of claims, the same principle holds with respect to the extent to which a reference teaches away from an invention. Appellants have pointed out above the various reasons that WALTON et al implicitly teaches away from patches on bags, i.e., by teaching the use of a superior polymer in the *bag* film, in order to avoid the "expensive practice" of using thicker films and extra layers in a patch-like fashion to "artificially enhance" the puncture-resistance of the bag. Appellants contend that WALTON et al is inferentially teaching one skilled in the art not to use a patch, i.e., to

use the substantially linear ethylene copolymer of WALTON et al to avoid the need for placing a patch on the bag.

3. WALTON et al is Incompatible with FERGUSON et al '856

The rejection is further flawed in that while FERGUSON '856 teaches a blend of VLDPE and LLDPE, *WALTON et al also teaches away from VLDPE:*

> ...the need still exists for improved olefin packaging films and bags...with particular improvement needed in...abuse...resistance...relative to the VLDPE olefin polymers.... [WALTON et al, Col. 6 lines 35-43]

Thus, FERGUSON et al '856 and WALTON et al are *incompatible with one another.* FERGUSON et al '856 cannot be modified with WALTON et al to arrive at subject matter consistent with both FERGUSON et al '856 and WALTON et al. More particularly, if WALTON et al is being relied upon for teaching a patch on a bag, this cannot be separated from the clear teaching of substantially linear ethylene copolymer in WALTON et al. The substantially linear ethylene copolymer of WALTON et al is a homogeneous copolymer, and as such is clearly different from both the VLDPE and the LLDPE taught by FERGUSON et al '856. As such, it is improper to take patches on bags from WALTON et al and a blend of VLDPE and LLDPE from FERGUSON et al '856, while ignoring the clear teaching of superiority (over VLDPE) of substantially linear ethylene copolymer of WALTON et al. Such a course of action defeats the purpose of WALTON et al. It is not proper to combine references in a manner which defeats the purpose of one of the references. In summary, WALTON et al is incompatible with FERGUSON et al '856. This is yet another reason that a prima facie case of obviousness has not been set forth in the Office Actions or the Examiner's Answer.

4. FERGUSON et al '856 Does Not Teach or Suggest Appellants' Claim 6

Appellants' Claim 6 depends from Claim 1, and further recites the blend as comprising at least 75 percent of the patch, based on total patch weight. Thus, Claim 6 requires the blend of the first component (i.e., LLDPE) and the second component (i.e., VLDPE) to make up at least 75% of the total weight of the patch film. Page 7 lines 16-21 of the Examiner's Answer is directed to Appellants' Claim 6, and refers to Column 10 lines 30-40 of FERGUSON et al '856, and states that this portion of FERGUSON et al teaches that the layers of heterogeneous ethylene/alpha-olefin copolymer having a density of less than 0.915 g/cc (VLDPE) comprise at least 65% of the thickness of the film. While this statement is correct, it fails to address Appellant's recited *blend*.

Contrary to the statements of the Examiner, Column 10 lines 30-40 of FERGUSON et al '856 does NOT apply to a blend. Rather, the Column 10 lines 30-40 corresponds with Claim 11, which reads as follows:

> 11. A multi-layer thermoplastic barrier film comprising:
> (a) at least one layer **consisting essentially of a very low density polyethylene** having a density of less than 0.910 gms/cc and a melt temperature of about 244°F, said layer or layers of very low density polyethylene **comprising at least 65% of the thickness of said multi-layer film**; and, said very low density polyethylene layer being orientable below the boiling point of water;
> (b) a layer comprising a polymeric barrier material; and,
> (c) a thermoplastic polymeric layer comprising a material selected from the group consisting of: (1) ethylene polymers and copolymers, and (2) blends of polymers or copolymers selected from group (1). [FERGUSON et al '856, Claim 11, emphasis added]

Thus, as is apparent from Claim 11 above, the only disclosure of the range of "...at least 65% of the thickness..." is a disclosure of a layer **consisting essentially of** VLDPE. The

presence of at least 5% LLDPE (as required by Appellants' claims) in the layer comprising VLDPE would materially change the layer. Thus, this portion of FERGUSON et al '856 does not support a rejection of Claim 6, which recites the ***blend*** as making up at least 75% of the total film weight. Neither FERGUSON et al '856 nor WALTON et al, either alone or in combination, teaches or suggests a patch bag having a patch comprising a blend of LLDPE and VLDPE in which the blend makes up at least 75% of the total weight of the patch film. No prima facie case of obviousness of Claim 6 has been set forth in any of the Office Actions, or in the Examiner's Answer.

5. FERGUSON '403 Is Incompatible With FERGUSON et al '856

Claims 18-24 stand rejected as obvious over FERGUSON et al '856 in view of WALTON et al further in view of FERGUSON USPN 4,755,403. While FERGUSON et al '856 and WALTON et al are relied upon as in the rejection of Claim 1, FERGUSON '403 is relied on for the disclosure of a symmetrical multilayer patch film having an inner layer of 100% EVA which adheres to itself, this EVA having a vinyl acetate content of 28%. The revised Examiner's Answer goes on to conclude that it would have been obvious to use a blend of VLDPE and LLDPE in the outer layers of the patch film, with the patch being adhered to the bag with an adhesive as disclosed in FERGUSON '403.

While the revised Examiner's Answer goes on to conclude that it would have been obvious to provide the outer layers with a blend of VLDPE and LLDPE in which the VLDPE is present in the dominant amount, the revised Examiner's Answer fails to address the fact that FERGUSON '403 discloses outer layers comprising a blend of LLDPE and EVA. FERGUSON '403 has no teaching or suggestion of patch having

outer layers comprising a blend of LLDPE and VLDPE. Rather, FERGUSON '403 states that:

> It has been surprisingly found that the increased strength and toughness of the patch according to the present invention is greatly enhanced by the use of linear low density polyethylene. The copolymers referred to as linear low density polyethylene generally have a density of 0.900 to 0.935 grams per cubic centimeter and a crystalline melting point in the range of 110°C. to 125°C. These linear low density polyethylenes are not hompolymers although they are referred to generally as "polyethylene". In fact, they are copolymers of ethylene and an alpha-olefin having a carbon number less than 18, for instance, butene-1, pentene-1, hexene-1, octene-1, etc. In the Dowlex brand of linear low density polyethylene used in the above preferred embodiment it is understood that the alpha-olefin is octene-1. Examples of patents showing the use of such polymers are U.S. Pat. No. 4,425,268 which issued on Jan. 8, 1984 to Barry A. Cooper; U.S. Pat. No. 4,456,646 which issued on June 26, 1984 to Nishimoto et al; U.S. Pat. No. 4,399,180 which issued on Aug. 16, 1983 to William F. Briggs et al; and U.S. Pat. No. 4,457,960 which issued on July 3,1984 to David L. Newsome. [FERGUSON '403 Column 3 line 59-Column 4 line 12, emphasis added].

One of ordinary skill in the art would not ignore the reference to LLDPE in FERGUSON '403. Rather, one of ordinary skill in the art would not take the inner EVA layers and the self-welding patch film structure of FERGUSON '403 without also taking the teaching of the "...surprising...increased strength and toughness..." provided by LLDPE. As such, taking the self-welding inner EVA layers from FERGUSON '403 while changing the LLDPE-EVA blend in the outer layers to a blend of VLDPE and LLDPE from FERGUSON et al '856, is changing the outer layers in a manner incompatible with the FERGUSON '403 teaching of "surprising strength and toughness" provided by LLDPE

in the outer layers of the patch film. Again, it is improper to combine references in a manner thwarting the objectives of one of the references.

Interestingly, in the 14 May 2001 Office Action, the Examiner rejected Claims 1-8, 10-11, 14, and 16-24 as obvious over FERGUSON '403 in view of Japanese Abstract 0302954, to Oya. In response, Appellants argued that one of ordinary skill in the art would not have substituted the VLDPE of the film of OYA for any of the LLDPE of the patch film of FERGUSON '403, as such a substitution would have been believed to have jeopardized the surprising strength and toughness of the resulting patch relative to the patch of FERGUSON '403, and Appellants further argued that whether VLDPE will meet or exceed the performance of LLDPE in a patch is chemically unpredictable, and that it simply must be experimented with in order to be determined. Thereafter, the rejection based on FERGUSON '403 in view of OYA was ultimately withdrawn. Appellants contend that the rejection based on FERGUSON et al '856 in view of WALTON further in view of FERGUSON '403 should be reversed for the reasons expressed above which were in part responsible for the withdrawal of the rejection based on FERGUSON '403 in view of OYA.

6. The Related Proceeding of the Georgelos et al Application Does Not Dictate the Same Result in This Appeal

The revised Examiner's Answer identifies

Ex parte Paul N. Georgelos and Paul D. Tatarka
Appeal No. 2003-0501,

and provides a copy of the Decision on Appeal in that proceeding. The Decision on Appeal held that a claim directed to a particular heat-shrinkable patch bag containing a

three-component blend to be obvious over WALTON et al '958 in view of USPN 5,928,740, to Wilhoit. Page 5 lines 1-14 of the Decision on Appeal provides an extended quotation from the examiner handling the Georgelos et al application. The quotation states, in part, that "...it is well known in the art to use patches on bags...as taught by WALTON et al...." Immediately thereafter, i.e., on Page 5 line 15 of the Decision on Appeal, the Board states "We find no error in the examiner's reasoning...." While acknowledging the argument of Georgelos et al that one of skill in the art would have used the substantially linear copolymer of WALTON et al '958 over the blend of WILHOIT et al, the Decision on Appeal nevertheless went on to agree with the examiner's reasoning "...particularly in light of the acknowledgement in appellants' specification that *a common solution to the problem* is to improve the puncture and abrasion resistance of the bag film by adhering a patch to the outer surface of the...bag". [Emphasis Added] The Decision on Appeal thereafter states "...appellants' admitted prior art provides factual support for the examiner's conclusion that it would have been obvious to use the identical materials for both the patch and the bag."

The Georgelos et al Decision on Appeal does not dictate the same result in Appellants' appeal for the reason that WALTON et al must be considered in its entirety, for all that it discloses, both explicitly and implicitly. One cannot simply take from WALTON et al the teaching of a patch on a bag, and conveniently ignore the teaching that a patch is an "expensive practice" which film producers have "resorted to" to "artificially" enhance puncture resistance to a bag used to package a bone-in meat product. One of skill in the art would not have ignored these teachings, as well as the teaching in WALTON et al to substitute a substantially linear ethylene copolymer for the

VLDPE in the ***bag*** in order to provide enhanced toughness, i.e., *so that a patch is not needed.* When considered in this light, WALTON et al teaches one of skill in the art to go in the direction of strengthening the bag film, to provide a patchless bag, and not to adhere a patch to the bag.

As to any implication that Appellants have admitted that a "common solution to the problem" is simply to place a patch on a bag, Appellants point out that their specification contains no such statement. Not just any film can serve as a patch film. Patch films need to provide a high level of impact strength and substantial heat shrink at a relatively low temperature such as 185°F. Page 1 lines 22-26 of Appellants specification states:

> Various patch bags have been commercialized for the packaging of bone-in fresh meat products, especially fresh red meat products and other bone-in meat products, such as whole bone-in pork loins, etc. The patch reduces the likelihood of film puncture from protruding bones. The patch needs to exhibit good resistance to bone puncture. Optimally, the patch should also exhibit a relatively high free shrink at a relatively low temperature.
>
> U.S. Patent No. 4,755,403, to Ferguson, discloses a patch bag having a heat-shrinkable patch containing a blend of linear low density polyethylene blended with ethylene vinyl acetate copolymer. U.S. Patent No. 5,302,402, to Dudenhoeffer et al., discloses the use of various polymers, including very low density polyethylene, in a non-heat-shrinkable patch for a patch bag. AU-B-40238/95 (based on Australian application40238/95, published June 20, 1996) discloses the use of homogeneous ethylene/alpha-olefin copolymer in a patch for a patch bag.

The above excerpt from Appellants' specification clearly refers to "various patch bags" that have been commercialized. The patches in these patch bags comprise specific polymeric formulations, not just any polymer or combination of polymers. More particularly, Appellants' specification goes on to refer to three specific patent publications each of which teaches a specific polymeric formulation for a patch film to be

adhered to a bag. This is the opposite of any general notion of a "common solution" of using a patch to solve the problem. Yes, using a patch has solved the problem...but not just any patch. Rather, only a few specific polymeric formulations have been found to provide the desired performance features for a patch film.

One of ordinary skill in the art would know enough about patch films to know that not just any film in the prior art is suited for use as a patch. It is a fact that in the patch bag art, the greatest commercial success has been from a patch bag containing a blend of LLDPE and EVA, in accordance with FERGUSON 4,755,403. The FERGUSON '403 patch exhibited a surprising combination of puncture resistance, abrasion resistance, and free shrink at 185°F. In contrast, the VLDPE-based non-shrink patch formulation of USPN 5,302,402, to Dudenhoeffer, was pursued commercially for only a relatively brief period, as the marketplace preferred the patch bag of FERGUSON '403. This is evidence that not just any film is suited for use as a patch film.

It is not realistic to assess patentability by first reading Appellants' claimed patch bag as disclosed in their application and thereafter using hindsight to seek out the same polymer formulation in a non-patch use, and then hold that it would have been obvious to one of ordinary skill in the art to have used this polymer formulation to make a patch. In the real world, one of ordinary skill in the art working on a new patch would first look to the known patch bag formulations, for example in prior art patents such as FERGUSON '403 and DUDENHOEFFER '402, and consider whether there may be other formulations which could be used to make a successful patch. Those of ordinary skill in the art know that bag films have different requirements than patch films. Bag films must be hermetically heat sealable and exhibit high oxygen barrier properties. Patch films do not

require either of these properties. Whereas bag films do not have to be thick and do not have to exhibit high puncture resistance, patch films are usually quite thick and exhibit high puncture resistance and abrasion resistance. For one of ordinary skill in the art, these differences in desired properties distinguish bag films from patch films. Accordingly, one of ordinary skill in the patch bag art would not necessarily look to bag films (such as FERGUSON et al '856) in order to locate a suitable polymer formulation for use in a patch film.

Appellants' Evidence of Unexpected Results

Appellants' specification provides evidence of the unexpected results of their patch film formulation. See Table V, on Page 36 of Appellants' specification, provided herewith as Exhibit A. The results in Table V demonstrate that Film No. 2 (a film of Appellants' invention) exhibited a significantly higher Impact Peak Load, Indexed Peak Load, Impact Energy to Break, and Indexed Impact Energy than a comparable film having only VLDPE. Compare Film No. 2 with Film No. 1. Moreover, the Film No. 2 exhibited significantly higher free shrink at 185°F than a comparable film having only LLDPE. Compare Film No. 2 with Film No. 3. The resulting combination of relatively high free shrink (much better than LLDPE) and superior impact strength (comparable to Film No. 3) was surprising and unexpected.

Table VIII, on Page 40 of Appellants' specification, provides further evidence of unexpected results. Table VIII is provided herewith as Exhibit B. The results in Table VIII demonstrate that compared with Film No. 4 of Appellants' invention, Film No. 5, made using VLDPE instead of a blend of VLDPE and LLDPE, exhibited significantly

higher leaker rate in the Standard Rib Drop Test (25% versus 33.3%). This test is considered to simulate real world performance of a patch bag. Compared with Film No. 4 of Appellants' invention, Film No. 6, made using LLDPE instead of a blend of VLDPE and LLDPE, exhibited significantly lower low free shrink, significantly lower Indexed Energy to Break, and significantly lower performance in the Standard Rib Drop Test. Compared with Film No. 4 of Appellants' invention, Film No. 7, made using a blend of a homogeneous ethylene/alpha-olefin copolymer and LLDPE, exhibited significantly lower free shrink, significantly lower Indexed Energy to Break and significantly lower performance in the Standard Rib Drop Test.

Table X, on Page 46 of Appellants' specification, provides still further evidence of unexpected results. Table X is provided herewith as Exhibit C. The results in Table X demonstrate that Film No. 9 and Film No. 10 of Appellants' invention exhibited significantly higher Indexed Energy to Break than either Film No. 8 (Comparative, containing LLDPE instead of Appellants' blend) and Film No. 11 (Comparative, containing VLDPE instead of Appellants' blend).

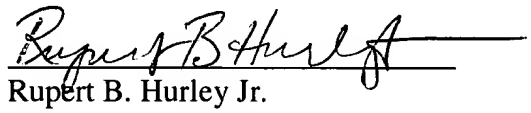
Request for Oral Hearing

Appellants filed a Request for Oral Hearing on May 10, 2005, at the time of mailing of the first Reply Brief in response to the first Examiner's Answer. Appellants hereby renew this request, and assume that the earlier-filed Request for Oral Hearing is being honored even though no second request is being filed with this Revised Reply Brief. Hence, no second Request for Oral Hearing or fee therefor is provided herewith.

Conclusion

Appellants respectfully submit that, for all of the foregoing reasons, Claims 1 and 3-26 are patentable over the art of record. The rejection of those claims should therefore be Reversed, with a view towards Allowance.

Respectfully submitted,



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Enclosures: Exhibit A
Exhibit B
Exhibit C

Exhibit A

Table V

Film No.	Free Shrink @185°F (%)	Impact Peak Load (N)	Indexed Peak Load (N/mil)	Impact Energy to Break (J)	Indexed Impact Energy (J/mil)	Thickness (mil)	Composition Providing Impact (% in outer layer)
1	75	159	60	2.2	0.83	2.64	87% VLDPE #1 10% EVA #1
2	61	192	71	3.0	1.11	2.71	43.5% VLDPE #1 43.5% LLDPE #1 10% EVA #1
3	49	195	78	2.9	1.16	2.50	87% LLDPE #1 10% EVA #1

Exhibit B

Table VIII

Film #	Free Shrink @185°F (%)	Impact Peak Load (N)	Indexed Peak Load (N/mil)	Impact Energy to Break (J)	Indexed Energy to Break (J/mil)	Thickness (mil)	Standard Rib Drop Test[1] (%); (n = 96)	Composition of Majority Layer
4	55	530	98	9.4	1.74	5.4	25	Blend of VLDPE & LLDPE
5	57	527	98	9.5	1.75	5.4	33.3	VLDPE
6	28	455	101	6.3	1.40	4.5	37.5	LLDPE
7	48	482	93	8.0	1.54	5.2	43.8	Blend of HEAO & LLDPE

Exhibit C

Table X

Patch Film No.	Total Free Shrink @185°F (%)	Impact Peak Load (N)	Indexed Peak Load (N/mil)	Impact Energy to Break (J)	Indexed Energy to Break (J/mil)	Thick-ness (mil)	Composition of Majority Layer
8 (Comparative)	33	513	112	6.7	1.46	4.6	97% LLDPE No. 2
9 (Invention)	36	529	110	8.1	1.69	4.8	Blend of 50% VLDPE No. 1 And 47% LLDPE No. 2
10 (Invention)	44	509	106	8.0	1.67	4.8	Blend of 75% VLDPE No. 1 And 23% LLDPE No. 2
11 (Comparative)	48	479	100	7.5	1.56	4.8	97% VLDPE No. 1